

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
GUSTAVO SARAIVIA, RONALD CUCOLO, :  
and OMAR MORALES AGUILAR; on behalf :  
of themselves and all other persons similarly :  
situated, :  
:  
*Plaintiffs,* :  
:  
-against- :  
:  
2799 BROADWAY GROCERY LLC d/b/a :  
CASCABEL TAQUERIA, et al., :  
:  
*Defendants.* :  
:  
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USDC SDNY  
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ELECTRONICALLY FILED  
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DATE FILED: January 7, 2015

12 Civ. 7310 (PAC)

**ORDER**

HONORABLE PAUL A. CROTTY, United States District Judge:


Plaintiffs have requested a ruling on whether putative class members who have signed a so-called petition choosing to opt out of the pending class action have validly opted out of the suit. On December 22, 2014, Plaintiffs informed the Court that Plaintiffs' counsel received a fax with a list of signatures of those purportedly intending to opt out of the class. Plaintiffs state concern (1) that the signatories may not have received the class notice authorized by the Court; (2) that there may have been coercion involved in the signing of the petition; and (3) that they cannot make out the names in the list.

These signatures constitute valid opt outs. Plaintiffs' assertion that the individuals who signed the petition may not have received the notice is unsupported by anything more than speculation. It was the task of Plaintiffs to mail notice to the putative class, and Plaintiffs have not suggested that they failed to do so or that they have received any indication that some mailings were not received. Likewise, Plaintiffs' suggestion that an unknown individual

obtained the signatures by means of coercion is wholly speculative. The notice approved by this Court did not mandate a specific form putative class members must use to opt out. The notice simply required “a signed letter stating your intention to exclude yourself from the Class (opt-out).” The petition states its signatories’ intention to opt out of the class, and does not fail to include any aspect required in the notice.<sup>1</sup>

Dated: New York, New York  
January 7, 2015

SO ORDERED

  
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PAUL A. CROTTY  
United States District Judge

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<sup>1</sup> Plaintiffs’ final objection, that they could not read the names of the individuals listed on the petition, has been resolved by Defendants’ submission of a typed list of names clarifying the signatures. It appears, however, that Defendants misidentified the 29th signature on the list as “Pedro Cruz,” when the signature seems to read “Pedro A. Gracia.” The Court observes no other errors in Defendants’ list. The parties should together ensure that they have identified the correct individual.